

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC

DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY,

Complainant,

v.

Complaint No. 2007-40

ALAN R. MARCUS,

Respondent.

RECEIVED

NOV 27 2007

OFFICE OF PROF. RESP.

DECISION BY DEFAULT

On September 21, 2007, a Complaint was issued on behalf of the Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury, pursuant to 31 C.F.R. 10.60, under the authority of 31 U.S.C. 330, alleging that the Respondent, Alan R. Marcus, an attorney who practices before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The complaint seeks to have the Respondent disbarred from such practice, pursuant to 31 C.F.R. 10.50 and 10.70.

Also on September 21, 2007, copies of the Complaint and Notice of Institution of Proceedings, together with a covering letter, were sent to the Respondent by certified mail, return receipt requested, and by first class mail at his last known address of record with the Internal Revenue Service. The Notice advised the Respondent of his obligation to file an answer to the Complaint within 30 calendar days of service of the Complaint. Respondent was also advised that failure to answer the Complaint could result in a decision of default being rendered against him. The Complaint and Notice and the covering letter were delivered to Respondent at the address indicated on September 24, 2007, as shown by a United States Postal Service return receipt form. To date no answer to the Complaint has been received.

On November 6, 2007, counsel for the Director filed a Motion for Default Judgment with the undersigned. The motion, together with a covering letter, an affidavit from counsel for the Director, and attached exhibits, were sent to the Respondent, at his last known address, by UPS overnight delivery and by certified mail, return receipt requested, on November 7, 2007. To date, the Respondent has filed no response to the motion.

Ruling on Motion for Default Judgment

A review of the record herein shows that effective service of copies of the Complaint and Notice of Institution of Proceedings was made upon the Respondent in accordance with 31 C.F.R. 10.63(a). The Respondent was obliged to file an answer to the Complaint and the Amended Complaint or be subject to having a decision by default entered against him, but he failed to do so. No answer has been filed. Accordingly, the motion for default judgment is granted.

Pursuant to the provisions of 31 C.F.R. 10.64(d), failure to file a timely answer constitutes a waiver of hearing. Thus, the allegations of the Complaint are deemed to be admitted, and they may be considered as proved without further evidence. Inasmuch as the allegations in the Complaint have been admitted and no hearing or further proceeding is necessary, based on the record herein, I make the following:

Findings of Fact

1. At all times material, the Respondent was an attorney engaged in practice before the Internal Revenue Service and was subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility, Internal Revenue Service.

2. Respondent willfully failed to timely file his individual Federal income tax returns for the tax years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005; and willfully failed to pay or timely pay individual Federal income taxes due and owing for the tax years 1998, 1999, 2001, 2002, 2003, 2004 and 2005.

3. The conduct set forth above in Number 2 above is evidence of willful and disreputable conduct within the meaning of 31 C.F.R. 10.51 and reflects adversely on Respondent's current fitness to practice before the Internal Revenue Service.

Conclusions of Law

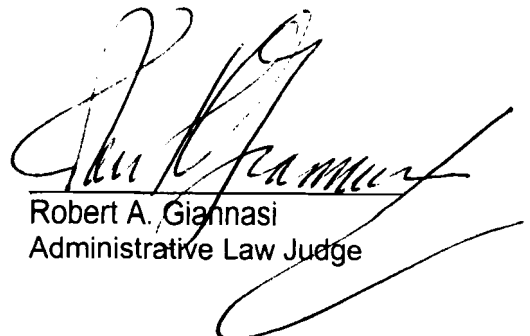
1. The Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension or disbarment by reason of disreputable conduct.

2. The Respondent's repeated failure to file required Federal tax returns and to pay or to timely pay income taxes due and owing constitutes disreputable conduct within the meaning of 31 C.F.R. 10.51. The Respondent's disreputable conduct and violation of the regulations governing practice before the Internal Revenue Service warrant his disbarment from such practice. There is no record evidence of extenuating or mitigating circumstances for such disreputable conduct. Accordingly, disbarment, the penalty sought by the Director, is reasonable.

Upon the foregoing findings of fact and conclusions of law, and on the entire record, it is

ORDERED that Alan R. Marcus is disbarred from practice before the Internal Revenue Service. Reinstatement is at the sole discretion of the Office of Professional Responsibility, at a minimum requiring Respondent to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or to have entered into an installment agreement or offer in compromise, which has been accepted by the IRS and with which he has remained in compliance.

Dated at Washington, D.C., November 26, 2007



Robert A. Giannasi
Administrative Law Judge